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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.10106 OF 2004

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Date:10.06.2005

Between:

K.Sridhar,

S/o K.Lakshmi Narayana, age 38 years,

R/o Jogipet, Medak District and 21 others.

Petitioners.

And

The Central Power Distribution Company of

A.P. Ltd., rep. By its Chief Managing Director,

Hyderabad and another.

Respondents.

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ORDER:

Heard Sri P.Giri Krishna, the learned counsel appearing for the petitioners and Smt. M.Vinobha Devi, the learned Standing Counsel appearing for the respondents 1 and 2.

In this Writ Petition, the petitioners 1 to 22 seek a Writ of Mandamus declaring the tender notification No.P-01 to P-15/04-05, dated 23.05.2004 issued by the second respondent as illegal.

The claim of the petitioners rests on the ground that they are doing business of electrical engineering works and they are registered as Electrical Contractors with a valid 'A' grade electrical licence issued by the C.E.I.G., Government of A.P./Hyderabad and valid enrollment in the Corporate Office of CPDCL apart from having sufficient experience in regard to the electrical department. Their case is that they are carrying on the operation and maintenance including watch and ward of 33/11 K.V. Sub-stations in Medak circle for the last several years on rate contract basis. In respect of each of the petitioners, the area wise particulars have also been shown in the affidavit. However, the petitioners complained against the issuance of impugned tender notification dated 23.05.2004 whereunder the respondents invited sub-division wise tenders for operation and maintenance of 180 Nos.33/11 K.V. Sub-stations in the operation circle of Medak. It is pointed out that the impugned

notification is done with a view to allot the work to their henchmen and to avoid the legitimate rights of the petitioners who are the existing contractors and doing the business for the last several years. Further, it is pointed out that even in regard to the various conditions imposed including as to maintenance of 24 hours power supply per day and variation in regard to the number of staff to be employed at each Sub-station and production of income tax clearance certificate, contract drivers licence etc., are totally in the teeth of running contract with the petitioners and the same is wholly unjustified. It is pointed out that several such conditions as sought to be imposed in the impugned notification could not possibly be complied with by the petitioners since they do not possess any of them except the work on hand and the experience behind. Therefore, in view of the impugned notification, the petitioners will lose their job work. It is also pointed out that in the similar circumstances, the notification issued by the A.P. Productivity Council land Setwin was challenged in another Writ Petition in W.P.No.9335 of 2002 wherein this Court granted stay and the same is still pending. Therefore, having regard to the absence of mention in regard to the number of staff who are being maintained at each Sub-station, the same is proposed to be varied at later stage and insistence for production of income tax clearance certificate and experience of work of value not less than Rs.20,00,000/- are wholly unsustainable and even the production of contract labour licence also does not arise. Hence, the Writ Petition.

This Court granted interim stay at the admission stage in W.P.M.P.12838 of 2004, dated 22.06.2004.

On filing the application by the respondents 1 and 2 seeking for vacation of the stay

along with the detailed counter affidavit, the main Writ Petition was taken up for disposal at the instance of both the sides.

In the counter affidavit filed by the second respondent, it is stated that having regard to the exigency, the impugned notification is issued contemplating several conditions in the interest of proper maintenance round the clock with utmost care and caution by engaging efficient watchmen etc., Further, it is pointed out that the petitioners have absolutely no manner of right muchless enforceable one to maintain the very Writ Petition nor to seek any indulgence from this Court. That apart, the subject matter is purely a contractual one and there is no statutory slaver attached thereto. Hence, neither there is any violation thereof nor any enforcement thereunder. The requirement of staff has been explained depending on the workload at each work Station. Further, having regard to the practical difficulties and coming across in the maintenance of each Sub-stations, the aforesaid conditions have been imposed in the very tender notification and therefore, the petitioners cannot make any complaint against the same. It is further pointed out that the impugned action is purely a policy decision and therefore, the same cannot be interdicted with by exercise of powers under Article 226 of the Constitution of India. Hence, the Writ Petition is liable to be dismissed.

Considering the submissions made on either side in detail and at length and on perusal of the material available on record, the only question which arises for consideration is as to whether on the facts and circumstances the petitioners have any *locus standi* to question the impugned notification and whether the impugned notification is vitiated in any manner ?

The petitioners claim that they have been working as contractors for the last several years in Medak circle and attending to the work with utmost satisfaction and therefore, the impugned action calling for tenders with several conditions which could not possibly be complied with by the petitioners is wholly unsustainable and illegal and affects their existing work.

In the affidavit filed in support of the Writ Petition, except making a bald allegation that all the petitioners are doing the said contract work for the last several years but no particulars or details were furnished or any reference was made as to the contractual work which was initially assigned to them and the conditions contained therein. There is no reason forthcoming as to why such particulars are not furnished. There is no denial to the fact that the petitioners are attending to the said work prior to the issuance of the impugned notification, and it transpires from the very averment as made from both the sides that it is only an intermittent allotment of work rather than conferring any right muchless a contractual work. It is pointed that it is only with a view to effectuate the efficiency in attending to the Sub-stations, the necessary qualifications have been prescribed and the same can be manned by the qualified and efficient people. Admittedly, none of those conditions are possessed by the petitioners. There cannot be any doubt to say that the impugned decision is certainly a policy decision on the part of the respondents herein in the interests of job work with greater efficiency. It is now well settled that this Court would not venture in exercise of its powers under Article 226 of the Constitution of India to interdict any such policy decision. Further, having regard to the very nature of work and the

reason as shown in the counter affidavit filed on behalf of the respondents that the said conditions are only in aid of improving the service and efficiency. Even the work as sought to be assigned under the impugned notification is purely that of a contract and any such pre-conditions imposed cannot be challenged by the petitioners, more so when the petitioners themselves do not possess any of those conditions. Hence, I do not find any merits in the very claim of the petitioners. In the circumstances, it has to be held that the petitioners have no right much less enforceable one to seek any indulgence as such nor they have any sound basis to challenge the impugned notification.

The Writ Petition is dismissed. No costs.

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B. PRAKASH RAO, J

10th June 2005.

Chvn.